

# **7 FAM 1140 ACQUISITION OF NONCITIZEN U.S. NATIONALITY BY BIRTH ABROAD**

## **7 FAM 1141 GOVERNED BY LEGISLATION**

(TL:CON-66; 10-10-96)

a. The acquisition of noncitizen U.S. nationality by birth abroad is governed by *treaty or congressional legislation*. The law in effect when a person was born governs that person's acquisition of noncitizen U.S. nationality, unless *the legislation specifically provides otherwise such as retroactive application*. The national or nationals through whom a child claims noncitizen U.S. nationality must have been U.S. nationals when the child was born and previously must have resided or been physically present in the United States or one of its outlying possessions as required by the applicable law.

b. The considerations in 7 FAM 1131, relating to blood relationships, and 7 FAM 1161, concerning posthumous children also apply to persons claiming noncitizen U.S. nationality through their parents.

c. Persons who acquired noncitizen U.S. nationality at birth were never subject to special requirements for retaining their U.S. nationality.

## **7 FAM 1142 BEFORE JANUARY 13, 1941**

(TL:CON-66; 10-10-96)

a. Until the Nationality Act of 1940, there was no comprehensive law under which a person born in a foreign country to a noncitizen U.S. national could acquire the parent's nationality status at birth, "the law of jus sanguinis being applicable to United States citizens" only.

b. *Acquisition of U.S. nationality by birth abroad before January 13, 1941, however, was possible.* For example:

(1) *Certain children born abroad to Puerto Rican U.S. nationals could acquire noncitizen U.S. nationality at birth [see 7 FAM 1122.3].* Such acquisition would depend on the existence of a U.S. law defining the *inhabitants or citizens of the territory* as U.S. nationals and of a U.S. or territorial law defining the status of the children of such citizens. Section 204(b) NA, which went into effect on January 13, 1941, was prospective in application and did not give noncitizen U.S. nationality to persons previously born abroad to noncitizen U.S. nationals [see 7 FAM 1143].

(2) Because the second paragraph of Section 205 NA was retroactive, children born out of wedlock before its effective date to noncitizen U.S. national women who previously had resided in the United States or one of its outlying possessions could claim noncitizen U.S. nationality [see 7 FAM 1134].

## **7 FAM 1143 JANUARY 13, 1941 THROUGH DECEMBER 23, 1952**

(TL:CON-13; 12-31-84)

- a. Section 204 NA stated that:

Unless otherwise provided in Section 201, the following shall be nationals, but not citizens, of the United States: ...

(b) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have resided in the United States or one of its outlying possessions prior to the birth of such person. ...

b. Section 205 NA specified the ways in which children born abroad out of wedlock to noncitizen U.S. nationals could acquire the parent's nationality status. [For the text of Section 205 NA, see 7 FAM 1134 .]

## 7 FAM 1144 CURRENT LAW

(TL:CON-66; 10-10-96)

a. The provisions of Section 308(2) INA (8 U.S.C. 1408(2)), which replaced those of Section 204(b) NA on December 24, 1952, were virtually identical:

Unless otherwise provided in Section 301 of this title, the following shall be nationals, but not citizens of the United States at birth: ...

(2) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States and have had a residence in the United States, or one of its outlying possessions prior to the birth of such person. ...

b. Section 308(2) INA applies only to persons born on or after December 24, 1952.

c. *Section 308(4) INA (8 U.S.C. 1408 (4)), which was added to the INA by Pub. L. 99-396 of August 27, 1986 (100 Stat 842) provides, for the first time, for acquisition of U.S. nationality (not citizenship) by birth abroad to one U.S. national parent. Section 308(4) INA states that:*

A person born outside the United States and its outlying possessions of parents one of whom is an alien, and the other a national, but not a citizen, of the United States who, prior to the birth such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years—

(A) during which the national parent was not outside the United States or its outlying possessions for a continuous period of more than one year, and

(B) at least five years of which were after attaining the age of fourteen years.

The proviso of section 301(g) of this title (8 U.S.C. 1401(g)) shall apply to the national parent under this paragraph in the same manner as it applies to the citizen parent under that section.

d. *Section 15 of Pub. L. 99-396, adding Section 308(4) to the INA, also stated that:*

*The amendment ... shall apply to persons born before, on, or after the date of the enactment of this act. In the case of a person born before the date of the enactment of this act—*

(1) the status of a national of the United States shall not be considered to be conferred upon the person until the date the person establishes to the satisfaction of the Secretary of State that the person meets the requirements of section 308(4) of the Immigration and Nationality Act, ...

e. *Thus, for a person born abroad prior to the effective date of Section 308(4) INA, August 27, 1986, U.S. nationality is conferred on the date the application is approved; i.e., noncitizen nationality is not retroactive to the birth date or the date of the act's enactment.*

f. *In the case of a person born abroad after August 27, 1986, whose application is approved, noncitizen U.S. nationality is deemed to have been conferred retroactively to the date of birth.*

g. *Section 309 INA specifies the circumstances under which Section 308(2) INA applies to a child born out of wedlock to a noncitizen U.S. national. [For its provisions, see 7 FAM 1133.]*

## **7 FAM 1145 PROOF OF CLAIM TO NONCITIZEN U.S. NATIONALITY BY BIRTH ABROAD**

*(TL:CON-66; 10-10-96)*

a. *Evidence to prove a claim to noncitizen U.S. nationality under Section 204(b) NA or Section 308(2) INA by birth abroad to two U.S. nationals consists of:*

- (1) A certified copy of the applicant's birth certificate;*
- (2) Proof of both parents' U.S. nationality status such as a U.S. passport indicating that the parents are U.S. nationals, or other documentation establishing nationality,*
- (3) The parents' marriage certificate; and*
- (4) Proof that both parents previously had resided in the United States or one of its outlying possessions.*

b. *Evidence to prove a claim to noncitizen U.S. nationality by birth abroad to one U.S. national parent under Section 308(4) consists of:*

- (1) A certified copy of the applicant's birth certificate;*
- (2) Proof of one parent's acquisition of U.S. nationality (ordinarily a U.S. passport indicating that the parent is a U.S. national) or documentation establishing parent's claim to U.S. nationality;*
- (3) The parents' marriage certificate; and*
- (4) Evidence that, prior to the applicant's birth, the U.S. national parent was physically present in the United States or an outlying possession (American Samoa, Swains Island) for a total of seven years drawn from any continuous ten-year period (allowing for absences of not more than one year), and five of those seven years must have been after the applicant's parent was age 14.*

*(a) The evidence submitted to establish physical presence of a parent may consist of records available from churches, schools, employees, immigration authorities, medical sources, and government agencies (e.g., tax and census records). In addition, a person may provide receipts for payment of utilities, auto registration fees, mortgage and rent receipts, and so forth.*

*(b) Affidavits may be used to supplement the documentation mentioned above but affidavits alone will not suffice. In order to be helpful, such an affidavit should be from a person having first-hand knowledge of the applicant's physical presence during particular time periods as reflected in specific recollections.*

(c) *In assessing such evidence, the consular officer is reminded that the quality of the evidence is more important than the quantity, and no rigid mechanical formula (e.g. one item of evidence for each year claimed) should be applied. The legislative history of this law offers guidance. Thus, the Congressional Record of August 1, 1986 states:*

*Many of the individuals who would qualify for U.S. nationality under this provision are older, and desirable records may not exist to substantiate the residency of their parents. In these cases, officials of the Department of State should rely on whatever information can be provided and use liberal discretion as they do to qualify every individual who can reasonably be presumed to be eligible. (132 Cong.Rec., pt. 13 (1986) p. 18619).*

c. *Persons who lack sufficient evidence should be so advised so that they can attempt to present additional documentation.*

d. *If a child was born abroad out of wedlock to a U.S. national mother, the necessary evidence would be the child's birth certificate and proof that the mother had met the applicable residence requirement of Section 205 NA (for children born prior to December 24, 1952) or the physical presence requirement of Section 309(c) (for children born on or after December 24, 1952).*

e. *If an illegitimate child of two noncitizen U.S. nationals did not acquire U.S. nationality at birth because the mother did not have the required one year continuous U.S. physical presence to transmit, the child would need to present evidence of birth to the two nationals, evidence of the parents' prior residence in the United States or one of its outlying possessions, and evidence of fulfillment of the conditions of Section 309(a) INA as amended [see 7 FAM 1133 ].*

**7 FAM 1146 THROUGH 1149 UNASSIGNED**